



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

**WILL WILSON  
ATTORNEY GENERAL**

June 18, 1958

Honorable O. B. Ellis  
Director, Texas Department  
of Corrections  
Huntsville, Texas

Opinion No. WW-454

Re: Authority of the Comptroller of Public Accounts to issue a warrant for payment of penalty required by the United States Government in order to market cotton raised on prison farms.

Dear Mr. Ellis:

You have requested an opinion concerning the authority of the Comptroller to issue a warrant in payment of necessary penalties in order to market cotton raised on four prison farms in Brazoria County.

Under the provisions of Section 1346, Title 7, United States Code Annotated, the Texas Department of Corrections is required to pay a certain penalty in order to market the cotton now being grown free of any lien on the Retrieve State Farm, Darrington State Farm, Clemens State Farm and Ramsey State Farm, all in Brazoria County. The cotton allotment made by the Brazoria County Committee on the 5th and 12th days of November, 1957, is now on appeal in the United States District Court for the Southern District of Texas, Galveston Division, in a case styled State of Texas, et al v. Jack Wendt, et al, Review Committee. In this case the Texas Department of Corrections is not questioning the liability of that Department to pay the penalties involved.

The only question presented in your request is that of the authority of the Comptroller to issue a warrant for the payment of the penalties. Under Subdivision d of Section 1346, Title 7, United States Code Annotated, the United States Government has a lien on all cotton raised on the above named farms until such penalty is paid. Therefore, it is necessary

for the Department of Corrections to pay the penalty in order to market the cotton free of any lien of the United States Government. It is our opinion that the payment of the penalty is an expense incidental to the marketing of the cotton.

Item 114 of the appropriation to the Texas Prison System in House Bill 133, Acts of the 55th Legislature, Regular Session, 1957, Chapter 385, page 870, provides as follows:

"For the Years Ending	
August 31,	August 31,
1958	1959

"For Other Expenses--		
"114. Food, medical supplies,		
stock feed, seed, fer-		
tilizer, insecticides,		
veterinary supplies,		
shoes, clothing and bed-		
ding, factory and shop		
materials, tires, tubes,		
gas, oil, repairs, of-		
fice supplies, rents,		
water and utilities,		
postage on material fur-		
nished to Board of Par-		
dons and Paroles, postage,		
telephone, telegraph,		
freight, express, dray-		
age, per diem of board		
members, travel expense,		
transportation of pri-		
soners, rewards, in-		
quests, insurance, bond		
premiums, cleaning sup-		
plies, equipment, and		
contingencies . . . . .	\$1,025,829	\$1,025,829
" . . . . .	"	"

At the time the above appropriation bill was enacted the cotton acreage allotment and the penalties accruing therefrom were not anticipated by the Legislature, and, therefore, such expense constitutes a contingent expense, payable out of Item 114. You are, therefore, advised that the Comptroller of Public Accounts is authorized to issue a warrant for the payment of such penalties.

Honorable O. B. Ellis, Page 3 (WW-454).

SUMMARY

The Comptroller of Public Accounts is authorized to issue a warrant for the payment of penalties necessary for the Department of Corrections to market cotton raised on the Texas Prison Farms in Brazoria County free and clear of existing liens by the United States Government.

Yours very truly,

WILL WILSON  
Attorney General of Texas

By *John Reeves*  
John Reeves  
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JR:BHT:jl

APPROVED:

OPINION COMMITTEE

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REVIEWED FOR THE ATTORNEY GENERAL  
BY:

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